

26th April, 1990

MINUTES OF SPECIAL CONVOCATION

Thursday, 26th April, 1990  
9:30 a.m.

PRESENT:

The Treasurer, (Mr. Lee K. Ferrier), Messrs. Arnup and Bastedo, Ms. Bellamy, Messrs. Campbell, Carey, Cullity, Ferguson and Furlong, Mrs. Graham, Messrs. Howie, Lawrence, Lerner, Levy, Manes, McKinnon and Noble, Ms. Peters, Messrs. Rock, Shaffer, Somerville, Spence, Thom, Thoman, Topp and Wardlaw, Mrs. Weaver and Mr. Yachetti.

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DISCIPLINE COMMITTEE

Re: HOWARD NORMAN GASOI, Toronto

Mr. Topp placed the matter before Convocation.

The reporter was sworn.

Messrs. Somerville and Thom withdrew and took no part in the discussions and decision.

Mr. R. Conway appeared for the Society and Mr. R. Warren appeared for the solicitor who was not present.

Convocation had before it the Report of the Discipline Committee dated 4th April, 1990, together with the Affidavit of Service sworn 10th April 1990 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th April, 1990 (marked Exhibit I). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Chair  
D. Jane Harvey  
Stuart Thom

In the matter of  
The Law Society Act  
and in the matter of

J. Robert Conway  
for the Society

NORMAN HOWARD GASOI  
of the City  
of Toronto  
a barrister and solicitor

Mr. Warren  
for the Solicitor

Heard: April 3, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On November 3rd, 1990, Complaint D85/89 was issued against Howard Norman Gasoi alleging that he was guilty of professional misconduct.

The matter was heard in public on April 3, 1990 before this Committee composed of Philip M. Epstein, as Chairman, D. Jane Harvey and Stuart Thom. Mr. Gasoi was not in attendance but was represented by Mr. Warren. J. Robert Conway appeared as counsel for the Law Society.

DECISION

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The following particular of professional misconduct was admitted and found to have been established:

Complaint D85/89

- 2(a) In or about August, 1989, he abandoned his practice without making adequate arrangements to protect the interest of his clients.

Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Fact:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D85/89 and is prepared to proceed with a hearing of this matter on April 3, 1990.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D85/89 and admits particular 2(a) therein. The Society will not be proceeding with particulars 2(b) and 2(c).

IV. FACTS

4. The Solicitor was called to the Bar in 1985, but he did not commence practice until late 1987. He then commenced practice in Toronto as a sole practitioner, and he continued his practice until around August, 1989.

5. On or about August 12, 1989, the Solicitor abandoned his practice without any notice to anyone, and without making any arrangements to protect the interest of his clients. He took all of his files and books and records with him.

6. Because of the Solicitor's failure to make any arrangements to protect the interest of his clients, on September 29, 1989 the Society obtained an order appointing it Trustee of the Solicitor's law practice.

7. The Solicitor declined to co-operate with the Staff Trustee in winding up his practice. This lack of co-operation made the wind-up quite difficult because the Staff Trustee had no records or files to work with.

8. The Solicitor also declined to respond to inquiries from the Staff Trustee concerning the accounting for approximately \$20,000 of client trust monies during the period from August 4, 1989 to September 15, 1989.

10. The Solicitor recognizes that his abandonment of his practice, together with his refusal to co-operate with the Society in the wind-up of his practice and in the investigation of complaints which the Society has received against him, will likely lead to a finding that he is ungovernable and to a recommendation that he be disbarred.

DATED at Toronto this 2nd day of April, 1990."

No further evidence was submitted.

In view of the evidence, and the lack of an explanation by the Solicitor, the Committee found the Solicitor to be ungovernable and hence guilty of professional misconduct. No evidence or argument as to penalty was presented by Mr. Gasoi's counsel, Mr. Warren.

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Howard Norman Gasoi be disbarred.

#### REASONS FOR RECOMMENDATION

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The Solicitor was called to the Bar in 1985 and was a sole practitioner in Toronto. He no longer practices law.

In the Agreed Statement of Facts filed as Exhibit 2, the Solicitor admits the misconduct set out in Complaint D85/89.

The misconduct outlined clearly warrants disbarment in the absence of a reasonable explanation, which was not provided.

The Society cannot allow a solicitor to abandon his practice and clients on whim and fail to make adequate provision for his clients' interests. In this case, the Solicitor further failed to assist the Society in winding up his practice after the abandonment, placing a further burden on his clients and the Society. The Solicitor is clearly ungovernable and as such, should be disbarred.

Howard Norman Gasoi was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on April 19, 1985.

ALL OF WHICH is respectfully submitted

DATED this 4th day of April, 1990

"D. Jane Harvey"  
D. Jane Harvey

It was moved by Mr. Topp, seconded by Mr. Lerner that the Report of the Discipline Committee be adopted.

Carried

It was moved by Mr. Topp, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is, that the solicitor be disbarred be adopted.

Carried

The solicitor was disbarred by Convocation.

Counsel retired.

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Messrs. Somerville and Thom returned.

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Re: JAY DUNCAN ROWATT, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Watson spoke to the matter and requested that Convocation adjourn the matter on consent to the next Special Convocation.

It was moved by Mr. Somerville, seconded by Mr. Lerner that the matter be adjourned to the next Special Convocation.

Carried

Counsel retired.

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Re: WILLIAM GEOFFREY MILNE, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. S. Devlin spoke to the matter and requested that Convocation adjourn the matter on consent to the next Special Convocation.

It was moved by Mr. Somerville, seconded by Mr. Lerner that the matter be adjourned to the next Special Convocation.

Carried

Counsel retired.

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Re: JAMES DOUGLAS LEITH ROSS, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. S. Devlin appeared for the Society and Mr. A. Nichol appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th February, 1990, together with an Affidavit of Service sworn 20th February 1990 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th February, 1990 (marked Exhibit I) together with Acknowledgement, Declaration and Consent signed by the solicitor on 26th April, 1990 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas G. Bastedo, Chair  
Ronald D. Manes  
Mrs. Netty Graham

In the matter of  
The Law Society Act  
and in the matter of

Shaun Devlin  
for the Society

JAMES DOUGLAS LEITH ROSS  
of the City  
of Toronto  
a barrister and solicitor

A. Nichol  
for the Solicitor

Heard: December 12, 1989

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On June 26th, 1989, Complaint D57/89 was issued and on July 28th, 1989, Complaint D63/89 was issued against James Douglas Leith Ross alleging that he was guilty of professional misconduct.

The matter was heard in public on December 12, 1989 before this Committee composed of Thomas G. Bastedo, Q.C., Chair, Ronald D. Manes and Mrs. Netty Graham. Mr. Ross was in attendance and was represented by A. Nichol. Shaun Devlin appeared as counsel for the Law Society.

DECISION

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The following particular of professional misconduct was admitted and found established:

Complaint D57/89

2 (a) He failed to reply to correspondence from the Law society and failed to return telephone calls from the Law Society with respect to a complaint filed by his client Zachariah Davis.

Complaint D63/89

2 (a) During the period August, 1988 to November 1988, more or less, he misled his client, Zachariah Davis, regarding the status of an action which he had been retained by Zachariah Davis to commence.

Evidence

The entirety of the evidence before the Committee on the issue of misconduct was in the form of the following Agreed Statement of Fact:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaints D57/89 and D63/89 and is prepared to proceed with a hearing of these matters before the Discipline Committee on December 12, 1989.

## II. IN PUBLIC/IN CAMERA

The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

## III. MISCONDUCT

The Solicitor admits misconduct with regard to Particular 2(a) of Complaint D57/89 and Particular 2(a) of Complaint D63/89. The Solicitor requests that the penalty portion of the hearing be adjourned to a date to be fixed in February 1990. That request is opposed by the Society.

## IV. BACKGROUND FACTS

The Solicitor was called to the Bar in 1957. He is a sole practitioner in Toronto with a general practice.

## V. FACTS

### Particular 2(a) Complaint D57/89 - Failure to Reply

The Law Society received a complaint from Zachariah Davis, a client of the Solicitor, on December 1, 1988. A copy of the complaint was sent to the Solicitor on January 5, 1989 with a request for the Solicitor's written comments.

When no reply was received, a registered letter was sent to the Solicitor on February 13, 1989. That letter gave a two week deadline for replying, failing which authorization for the issuance of disciplinary proceedings would be sought.

When no reply was received, telephone messages were left with the Solicitor's office on March 21, March 22 and March 31, 1989. When no reply was received, Complaint D57/89 was issued against the Solicitor.

After the issuance of Complaint D57/89, the Society met with the Solicitor who orally admitted the allegations made by Mr. Davis in his complaint. As a result of those admissions, Complaint D63/89 was issued against the Solicitor.

### Particular 2(a) Complaint D63/89 - Misleading Statements

Zachariah Davis retained the Solicitor on May 22, 1987 to commence defamation actions on behalf of himself and six other individuals. The Solicitor advised Mr. Davis that he would commence the necessary actions and carry them through to resolution.

However, the Solicitor did not ever draft any documents in order to commence any of the required actions. He did not at any time advise Mr. Davis or the other individuals that no actions had been commenced. Instead, he misled Mr. Davis on several occasions regarding the status of those matters, those occasions being when the Solicitor made the following statements:

1. August 31, 1988 - The Solicitor told Mr. Davis that seven claims had been sent to the court to be issued.
2. September 19, 1988 - The Solicitor told Mr. Davis that the claims were in the hands of the Sheriff for service.
3. September 29, 1988 - The Solicitor told Mr. Davis that six claims had been served and one had yet to be served.
4. On October 7, 1988, the Solicitor told Mr. Davis that the Sheriff had still to serve the last claim.

5. On October 14, 1988, the Solicitor told Mr. Davis that the Sheriff had still not been able to serve one of the claims. The Solicitor told Mr. Davis that he was not sure as to which one had not been served and he further told Mr. Davis that he would be attending upon the Sheriff to discover which one could not be served.
6. On October 24, 1988, the Solicitor said he was still unable to get in touch with the Sheriff.
7. On October 27, 1988, the Solicitor told Mr. Davis that he was going to see the Supervisor in the Sheriff's office to advise that the matter was very serious and that the claim had to be served by the weekend.
8. On November 1, 1988, the Solicitor told Mr. Davis that the Sheriff had lost the file.
9. On November 2, 1988, the Solicitor told Mr. Davis that he was going to the office of the Sheriff the next day to ensure that the matter was resolved before the weekend.
10. On November 16, 1988, the Solicitor told Mr. Davis that he had not heard anything from the Sheriff. Mr. Davis asked for the Sheriff's name and telephone number. The Solicitor declined to provide it and asked Mr. Davis to allow him to handle it.
11. On November 18, 1988, the Solicitor told Mr. Davis that he had spoken to the Supervisor at the Sheriff's office and given him a deadline for Monday, November 21, 1988 to have all of the claims issued.

On November 22, 1988, Mr. Davis telephoned the Solicitor's office. He did not reach the Solicitor and left a message. The Solicitor did not return the call. Mr. Davis then filed his complaint with the Law Society by letter dated November 29, 1988.

Mr. Davis has not commenced civil proceedings against the Solicitor to date. Neither Mr. Davis nor any of the other six individuals has commenced a defamation action against the original potential defendants, although the limitation period for such action would not appear to have expired.

#### VI. EVIDENCE RESPECTING PENALTY

##### Past Discipline

On April 3, 1986, Mr. Ross was reprimanded in Committee for misleading a fellow solicitor, breaching an undertaking to a fellow solicitor, and failing to maintain books and records on a current basis. Copies of the Complaint and the Agreed Statement of Facts in that matter are provided to the Committee.

On February 2, 1987, the Solicitor was reprimanded in Committee for failing to co-operate with the Law Society and failing to serve a client in a conscientious, diligent and efficient manner. Copies of the Complaint and the Agreed Statement of Facts in that matter are provided to the Committee.

DATED at Toronto this 12th day of December, 1989."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that James Douglas Leith Ross be suspended for a period of one month.

# REASONS FOR RECOMMENDATION

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The Solicitor was called to the Bar in 1957 and is a sole practitioner in Toronto with a general practice.

In the Agreed Statement of Facts filed as Exhibit 3, the Solicitor admits the misconduct set out in Complaint D57/89 and D63/89, both of which relate to the Solicitor's dealings with client Zachariah Davis.

Client Davis retained the Solicitor in May of 1987 to commence defamation actions on behalf of himself and six other individuals. The Solicitor accepted the retainer and represented to his client that he was taking the necessary steps to proceed with the litigation as instructed. The Solicitor has admitted that he took no action whatsoever, but rather, on a continuous basis, that is on at least eleven occasions misrepresented to his client as to the status of the proceedings. The nature and extent of these misrepresentations is quite remarkable in both their deceitfulness and imagination with which the Solicitor contrived the state of the "proceedings". Suffice to say that the Solicitor represented that the proceedings had been commenced and sent out to the Sheriff for service and then proceeded on a number of occasions to blame the Sheriff for non-service. Finally, client Davis complained to the Law Society by letter dated November 29, 1989.

It is fortunate for the Solicitor that the limitation period for such action would not appear to have expired.

The Solicitor further admitted in the Agreed Statement of Facts that he failed to reply to the Law Society with respect to client Davis' complaint although requested to do so on several occasions between January 5th, 1989 and the issuance of Complaint D57/89 on June 26th, 1989. It was only after the issuance of the complaint that the Society met with the Solicitor who orally admitted the allegations made by client Davis in his complaint.

The Solicitor has a past discipline record in both 1986 and 1987. The Solicitor was reprimanded in committee on April 3rd, 1986 for misleading a fellow solicitor, breaching an undertaking to a fellow solicitor, and failing to maintain books and records on a current basis. On February 2nd, 1987, the Solicitor was reprimanded in committee for failing to co-operate with the Law Society and failing to serve a client in a conscientious, diligent and efficient manner.

The Solicitor is now before us on admitted complaints where his behaviour is similar in many respects to his behaviour in the past which has been the subject of discipline on two previous occasions. On those occasions, the committees imposed a reprimand in committee. On this occasion, the committee is of the very clear view that the Solicitor must be suspended. The length of the suspension, through very serious discussion with members of the committee, and in the final result, we are unanimously of the view that we should accept the submissions of the Society that the Solicitor should be suspended for one month.

Having regard to the submissions on behalf of the Solicitor which were advanced to mitigate the penalty, we are of the view that the Solicitor may wish to take advantage of Practice Advisory in respect to the difficulties he is experiencing in the admission of his practice and with respect to the stress that the Solicitor is experiencing in conducting his practice. We believe that the Solicitor may wish to take advantage of the LINK programme.

Had it not been for the mitigating circumstances and the representations by Mr. Devlin on behalf of the Society with respect to penalty, the suspension period would have been much longer.



26th April, 1990

James Douglas Leith Ross was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on June 27th, 1957.

ALL OF WHICH is respectfully submitted

DATED this 13th day of February, 1990

"Thomas G. Bastedo"  
Thomas G. Bastedo, Q.C.  
Chair

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Report be adopted.

Carried

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Recommendation as to Penalty that is, that the solicitor be suspended for one month be adopted.

There were submissions by both counsel on the issue of penalty.

It was moved by Mr. Somerville, seconded by Mr. Lerner that there be an amendment to the Motion made on Penalty that is that the solicitor:

- (1) consult with the Practice Advisory Service and co-operate with it;
- (2) consult the Link program; and
- (3) undertake to co-operate with the Professional Standards program.

Carried

Mr. Nichol requested that the suspension take effect on May 1st, 1990.

Convocation granted that the 1 month suspension be effective on May 1st, 1990.

The solicitor and counsel retired.

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Re: MEYER FELDMAN, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. R. Conway appeared for the Society and Mr. C. Mark appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 9th January, 1990, together with an Affidavit of Service sworn 22nd January, 1990 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th January, 1990 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 26th April, 1990 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Chair  
Philip M. Epstein  
Robert C. Topp

In the matter of  
The Law Society Act  
and in the matter of

J. Robert Conway  
for the Society

MEYER FELDMAN  
of the City  
of Toronto  
a barrister and solicitor

Charles C. Mark  
for the Solicitor

Heard: November 29, 1988  
November 30, 1988  
February 22, 1989

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

AMENDED REPORT

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On April 12th, 1985, Complaint D33/85 was issued against Meyer Feldman alleging that he was guilty of professional misconduct.

On November 28th, 1985, Amended Complaint D16/85 was issued against Meyer Feldman alleging that he was guilty of professional misconduct.

The matters were heard in public on November 29th, 1988, November 30th, 1988, and February 22nd, 1989, by this Committee, composed of Robert J. Carter, Q.C. as Chair, Philip M. Epstein, Q.C., and Robert C. Topp. Mr. Feldman attended the hearing with counsel, Charles C. Mark, Q.C. J. Robert Conway appeared as counsel for The Society.

The penalty portion of these proceedings were heard in public on September 27th, 1989.

DECISION

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Your Committee has amended its original decision due to the fact that on the penalty portion of this hearing, new and important facts were revealed which affected the earlier findings. We are satisfied that had that evidence been presented at the trial portion of this matter that our conclusions could have only been those found in this Amended Report.

COMPLAINT D16/85

The following particulars of professional misconduct were alleged:

(Complaint D16/85, Paragraph 2)

- "(a) He and his law partner, the late John Cocomile, borrowed amounts aggregating \$83,800.00, more or less, from the following clients, by recourse to nominees, deliberately disguising the fact that he and Mr. Cocomile were the beneficial recipients of the loans:

26th April, 1990

<u>APPROXIMATE DATE OF LOAN</u>	<u>LENDING CLIENT</u>	<u>AMOUNT</u>
April 21, 1981	Tibor & Elisi Berk	\$33,800.00
June 2, 1981	Tibor Berk	15,000.00
June 2, 1981	Joseph Breslove	10,000.00
November 4, 1981	Betty Lockhart	25,000.00

- (b) He and his law partner, the late John Cocomile, borrowed amounts aggregating \$468,900.00, more or less, from clients, by recourse to nominees, deliberately disguising the fact that he and Mr. Cocomile were the beneficial recipients of the loan, and without ensuring that the clients' interests were fully protected by independent legal representation:

<u>APPROXIMATE DATE OF LOAN</u>	<u>LENDING CLIENT</u>	<u>AMOUNT</u>
November 3, 1978	Esther, Sonia and Moche Kaplan	\$23,000.00
November 3, 1978	Joseph Feldman	36,300.00
November 3, 1978	Gabriella Lietman	33,800.00
November 3, 1978	John Saraceni	20,000.00
November 3, 1978	Chil Elbaum	33,800.00
November 3, 1978	Michael and Ruth Gelles	33,800.00
March 3, 1979	John Saraceni	20,000.00
March 13, 1979	Gina Mezzatesta	30,000.00
March 13, 1979	Gina Mezzatesta	30,000.00
June 6, 1979	Mosala Textiles	20,000.00
July 20, 1979	Frank Cocomile	10,000.00
August 21, 1979	Lena & John Cusinaro	9,000.00
February 15, 1980	John Saraceni	33,800.00
May 28, 1980	Salvatore and M.R. Madonia	25,000.00
September 4, 1980	Joseph Breslove	9,000.00
November 24, 1980	Domenic and Serena Agueci	33,800.00

- (d) From in or about the month of November, 1980, until in or about the month of August, 1981, he induced numerous clients to lend amounts totalling \$788,500.00, more or less, to Paul Horvat Investments Limited by deliberate misrepresentations or omissions as to the nature and quality of the security being offered for such investment, and without informing his clients that he had a financial interest in the venture."

Evidence

The many dealings which are the subject of this complaint of professional misconduct originated in the mortgage broker activity of Mr. Feldman.

The Solicitor was called to the Bar in 1962 and practiced in partnership with the late John Cocomile until early 1982. During this period of time, the Solicitor syndicated mortgages and received funds from investors as participants in syndicated mortgages which were registered in the Solicitor's name in trust.

1. Particulars 2(a) & 2(b)

The Solicitor admitted having obtained 22 mortgage loans from clients and that he concealed from his clients that he was the true borrower. The amount involved was \$527,000.00 and the loans spanned the three year period November 3, 1978 to November 4, 1981.

The borrowing set out in Particular 2(b) was made prior to the change in the rule on borrowing from clients, which occurred in January, 1981. In total, 18 loans took place between November 3, 1978 and November 24, 1980. Under the old rule, these borrowings were permissible provided that the client's which occurred in January, 1981. In total, 18 loans took place between November 3, 1978 and November 24, 1980. Under the old rule, these borrowings were permissible provided the Solicitor could discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal representation.

The borrowing set out in Particular 2(a) occurred after the rule change, i.e. between April 21 and November 4, 1981. The effect of the rule change was to prohibit personal borrowing by a Solicitor from a non-institutional lender client.

The Solicitor admitted that in arranging the loans, he misled each client to believe that the borrower was a nominee. The Solicitor further admitted that the clients were not independently represented.

The evidence revealed that in both series of loans, no client suffered losses as each mortgage was repaid in full.

The evidence and admissions established that the Solicitor misled each client as to the true identity of the borrower due to the fact that he could not bring himself to admit to his investors that a calamity had occurred in the investment. The personal trust reposed in the solicitor by the investors was seen by the Solicitor to be a matter of honour in which he could not disappoint the investors.

At the original hearing in this matter, your Committee heard scant evidence to explain this conduct, however, on the penalty portion of the hearing, it became abundantly clear that the circuitous steps taken by the Solicitor were to protect the investors rather than to enrich himself or any other person.

We find subparagraphs (a) and (b) established. We are of the view that the loans set out in subparagraph (a) were prohibited ab initio in that the Solicitor was borrowing funds from his own clients. We further find that the loans set out in subparagraph (b), although not prohibited ab initio, violated the rule in that the loans were made without independent representation under circumstances of misrepresentation in a misguided, albeit successful, attempt to protect his investor clients.

We find the conduct of the Solicitor, i.e. the misrepresentations to his clients and the failure to ensure independent legal representation, to at least fall below the expected standard, but we are cognizant of the Solicitor's desire to protect the investors and the fact that as a result of the Solicitor's conduct, each investor was repaid in full.

2. Particular 2(d)

"(d) From in or about the month of November, 1980, until in or about the month of August, 1981, he induced numerous clients to lend amounts totalling \$788,500.00, more or less, to Paul Horvat Investments Limited, by deliberate misrepresentations or omissions as to the nature and quality of the security being offered for such investment, and without informing his clients that he had a financial interest in the venture."

The evidence established that during the time frame November, 1969 to August, 1981 that the Solicitor was engaged on behalf of one, Paul Horvat, in arranging mortgage financing for approximately 100 Horvat mortgages through the Solicitor's investor clients.

The Solicitor admitted that at the time of the transaction, he had developed a relationship with Horvat which was illustrated by the following circumstances:

- (a) \$7.0 million flowed through the Cocomile, Feldman trust account during the period from December, 1976 to December, 1982 for investments and transactions related to Horvat and his companies;
- (b) The Solicitor arranged substantial mortgages for Horvat on at least six properties during the period from December, 1978 to December, 1982, which mortgages totalled more than \$3.6 million;
- (c) The accounts rendered by the firm to Horvat for legal services during the period December, 1979 to December, 1982, totalled only \$9,000.00;
- (d) From December, 1978 to December, 1982, the Solicitor caused funds to be advanced from the firm's general bank account from time to time to meet Horvat's obligations to investor/clients under the syndicated mortgages. The total of these advances was in excess of \$185,000.00 and the maximum amount advanced at any one time was \$38,000.00;
- (e) Horvat and the Solicitor signed an agreement in September, 1980 under which the Solicitor was given a percentage of the profits in specified Horvat transactions in the amount of approximately 5%;
- (f) During the period from January, 1980 to January, 1981, the Solicitor appropriated from Horvat trust funds amounts totalling at least \$81,854.54 on account of profits due and/or anticipated by the Solicitor for himself; and
- (g) In December, 1980, Horvat and the Solicitor became co-venturers in various other properties by an exchange between themselves of portions of their personal holdings in those other properties.

The loans referred to in Particular 2(d) of Complaint D16/85 were made with respect to the following two properties:

Vaugheld

Polysar

Both properties were acquired by Horvat as raw land for commercial and residential development. They were located in Mississauga and Oakville.

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The lender clients referred to in Particular 2(d), and the amounts of their loans, were as follows:

Bornstein	\$ 520,000.00
Vitale	25,000.00
Capozzi	25,000.00
Saraceni	150,000.00
Frank Cocomile	<u>68,500.00</u>
	<u>\$ 788,500.00</u>

The Solicitor admitted the following particulars re: the Vaugheld and Polysar transactions:

(a) Vaugheld

Horvat acquired the Vaugheld property in January, 1978 at a price of \$1,454,750.00. He obtained mortgage loans on the property which were funded in part by client investors of the Solicitor.

Horvat sold the property in July, 1980 at a price of \$2,620,250.00 taking back a third mortgage in the amount of \$1,228,000.00 behind first and second mortgages totalling 1,094,750.00. The mortgages which had been funded by client investors of the Solicitor were discharged at the time of the sale, and some of those clients were "rolled over" into Horvat's vendor takeback mortgage. Their interests in that mortgage were covered by a Declaration of Trust stating that the Solicitor held 89.459% of that mortgage in trust for these clients and Horvat. Horvat had a beneficial interest in the 89.459% interest held by the Solicitor, and that interest changed as the number of investors in the Vaugheld property rose and fell. For the purposes of this Complaint, the lender clients in the vendor takeback third mortgage included the following:

Bornstein	\$ 175,000.00
Saraceni	<u>150,000.00</u>
	<u>\$ 325,000.00</u>

In November, 1980, \$150,000.00 of Bornstein's interest in the Vaugheld third mortgage was transferred to a sixth mortgage on the Polysar property. \$25,000.00 of Bornstein's money remained in the Vaugheld third mortgage.

The Solicitor then syndicated Bornstein's \$150,000.00 interest in the Vaugheld third mortgage to other clients, including an interest of \$55,000.00 to lender client, Frank Cocomile.

Between July, 1980 and March, 1981, other client investors obtained an interest in the 89.459% of the third mortgage held by the Solicitor in trust.

As a result of the changes referred to, the lender clients' interest as of March 31, 1981 was as follows:

Vaugheld Third Mortgage

Bornstein	\$ 25,000.00
Capozzi	25,000.00
Vitale	25,000.00
Saraceni	150,000.00
Frank Cocomile	55,000.00
	<u>\$ 280,000.00</u>

Polysar Sixth Mortgage

Bornstein	<u>\$ 150,000.00</u>
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During 1980 and 1981, portions of the Vaugheld property were sold and the Solicitor was put in funds to release the sold portions from the third mortgage. Between March, 1981 and August, 1981, he received funds for the discharge of the lender clients' interests in that mortgage, and he disbursed those funds for the benefit of Horvat. At the same time, he transferred the lender clients' security to seventh and eighth mortgages on the Polysar property.

(b) Polysar

Horvat had acquired the Polysar property in July, 1978 for \$1,150,000.00 with a first mortgage back to the vendor of \$950,000.00 and a second mortgage to P. Squires in trust of \$67,755.00. A third mortgage of \$130,000.00 was registered in July, 1979 and a fourth mortgage of \$50,000.00 was registered in October, 1979.

In November, 1980, Bornstein acquired a \$345,000.00 fifth mortgage on the Polysar property which interest was acquired by the transfer of an \$180,000.00 investment in another Horvat property and investment of a further \$165,00.00. In November, 1980, Bornstein also acquired a sixth mortgage in the amount of \$150,000.00 through the transfer of an investment in the Vaugheld third mortgage. Further transfers of client lender investments in the Vaugheld third mortgage were made in the period April, 1981 to August, 1981. As a result of these changes, the positions of the lender clients as of August 31, 1981 were as follows:

	<u>Lender Client Investment</u>	<u>Total Mtges.</u>
<u>1st to 4th Mortgages</u>		\$1,087,755.00
<u>5th Mortgage</u>		345,000.00
Bornstein	\$345,000.00	
<u>6th Mortgage</u>		150,000.00
Bornstein	150,000.00	
<u>7th Mortgage</u>		450,000.00
Bornstein	25,000.00	
Capozzi	25,000.00	
Vitale	25,000.00	
<u>8th Mortgage</u>		350,000.00
Saraceni	150,000.00	
F. Cocomile	68,500.00	
	<u>\$788,500.00</u>	<u>\$2,382,755.00</u>

Horvat defaulted on the Polysar mortgages during the fourth quarter of 1981 and some investors received payments of interest subsequent to the default from Horvat trust funds and from the general bank account of the firm, Cocomile, Feldman.

In May, 1982, Messrs. Horvat and Feldman made a proposal through the public accounting firm of Laventhol & Horwath, to the client/investors whereby the client/investors would be given security in another property ("the Fitzwood property") in which Horvat and Feldman held a 20% interest, if they (the client/investors) would agree to postpone or forego their security on the Polysar property. The letter stated in part:

"We are informed by Mr. M. Feldman that at the time the investment was made the market value of the lands was far in excess of all the mortgages on the property. However, with the downturn in the economy, Horvat has been unable to make his payments on the mortgages which are not in arrears, including the first mortgage to Polysar Corporation Limited."

Enclosed with the proposal was a letter of opinion from the Management Consulting Division of Laventhol & Horwath estimating the value of the Horvat/Feldman 20% interest at \$3,742,000.00.

Horvat and the Solicitor transferred their 20% interest to a trustee for all those to whom Horvat was indebted under the mortgages, including the lender clients referred to in Particular 2(d) of Complaint D16/85. The trustee was Rabbi Morton Green, a close friend and investor/client of the Solicitor.

The principal amounts owing to the lender clients referred to in Particular 2(d) of Complaint D16/85 when Horvat and the Solicitor transferred their 20% interest in the Fitzwood property to Rabbi Green were:

Bornstein	\$520,000.00
Saraceni	150,000.00
Vitale	25,000.00
Capozzi	25,000.00
Frank Cocomile	68,500.00
	<u>\$788,500.00</u>

In mid-July, 1982, the Solicitor personally promised to give Saraceni a payment of \$100,000.00 cash and a \$50,000.00 mortgage on the Solicitor's cottage to settle Saraceni's claim. The Solicitor was not able to honour this promise due to the last minute change of heart by Mr. Saraceni. The evidence before your Committee established that the Solicitor was prepared to honour this promise, but that Mr. Saraceni, for whatever reason, was not satisfied with this arrangement.

The Polysar property was sold by a prior encumbrancer under Power of Sale in August, 1985 and the mortgages securing the lender clients' interests were extinguished.

To date, no resolution of the Fitzwood property has occurred and each client remains unpaid. Questions as to the validity of the Horvat transfer of his interest to the Trustee have been raised by Horvat and remain unresolved.

#### Finding

The evidence clearly indicates that the Solicitor had the complete trust of each investor client. The fact that interest rates of 4% above prime were being offered and the Solicitor's assurance that their investments were "safe" made for what appeared to be a very attractive investment.

We are satisfied that the initial investments placed by the Solicitor were not improvident. In fact, we find that it was only when interest rates surged to unprecedented heights of between 13.75% in December, 1980 to 22.75% in August, 1981 that the problems began.



We find that the transfer of the investment from the Vaugheld property to Polysar property was improvident in that the security provided to the clients was woefully inadequate. We find that the replacement of the third mortgages on the Vaugheld property with fifth, sixth, seventh and eighth mortgages on the Polysar property failed to protect investors.

We find that the conflict between the Solicitor's client, Horvat, and the other investors called for immense care to be exercised. The Solicitor, relying upon the offer produced by Horvat, which offer fully protected all the investors, placed the 5th, 6th, 7th and 8th mortgages on the Polysar property. We find that this conduct was an omission rather than a deliberate misrepresentation in that given the Solicitor's reputation among his clients, it is clear to the Committee that most would have accepted his recommendation as long as their investment was "safe". The sudden turn around in the market lead to the non-completion of the offer and the losses suffered by his investor clients.

The Solicitor, while attempting to capitalize on the Polysar property, appeared to lose sight of his investor clients relying upon the representations of Horvat. This was a serious mistake.

We further draw an adverse inference from the failure of the Solicitor to declare his 5% interest in the property to his investor clients. However, having said that, we find that the evidence supports the proposition that most of the investors would have invested with the Solicitor even knowing of his interest.

We have concluded that the allegations set out in Particular 2(d) have been established in that we find the Solicitor:

- (a) Omitted to inform his investor clients as to the nature and quality of the security being offered for such investment; and
- (b) Omitted informing his clients that he had a 5% financial interest in the venture.

#### Complaint D33/85

The following particulars of professional misconduct were alleged:

(Complaint D33/85, Paragraph 2)

- (a) He was ordered by the Supreme Court of Ontario in an action commenced by Ivan Hrvoic et al to pay Mr. Hrvoic et al amounts totalling \$38,466.93, together with Solicitor and client costs as damages for inducing them to enter into a contract on the basis of misrepresentations.

#### Evidence

The evidence in this allegation was the oral Reasons for Judgment of His Lordship R.E. Holland in the case of Hrvoic et al v. Horvat and Feldman et. al.

Basically, the Court found that the Solicitor as Solicitor for the Company, should not have prepared certain documents regarding transfer of shares in the company (which documents were handed to Paul Horvat for execution) without informing the purchasers of the restriction in the transfer of the shares.

The Solicitor testified that he prepared the documents from precedents provided by Horvat. He further testified that he never met the investors as they were not his clients.

It is clear that the Solicitor relied upon Horvat following the restriction on the transfer of the shares and informing the purchasers in regard to those restrictions Horvat failed to do so.

### Finding

We find that although the Solicitor was negligent, the mere fact that Judgment has been rendered against him does not per se amount to professional misconduct. We are of the view that the evidence falls short of establishing professional misconduct and this allegation is, therefore, dismissed.

### RECOMMENDATION AS TO PENALTY

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We recommend that Meyer Feldman be suspended for a period of 18 months.

### REASONS FOR RECOMMENDATION

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In this matter the Law Society has sought disbarment of Mr. Feldman. Mr. Feldman's Counsel sought a Reprimand in Convocation. Implicit in the Law Society's request for disbarment was the suggestion and strong urging of Counsel for the Law Society that Mr. Feldman had acted dishonestly and to further his own interests. The Committee has specifically rejected that finding. Implicit in the Reasons for finding Mr. Feldman guilty of professional misconduct are that he acted in violation of the Rules and recklessly with respect to his clients' monies. We are all, however, completely satisfied that Mr. Feldman did not set out to cheat his clients or to deprive them of their money or to take any steps that would benefit his own position. We recognize that for Mr. Feldman a suspension of 18 months is a very serious penalty, particularly given what financial losses he has suffered as a result of the events in question. Nevertheless we have found that Mr. Feldman is guilty of sufficiently serious misconduct that a lengthy suspension is warranted.

Mr. Feldman presents a very puzzling picture. Many witnesses were called on his behalf at the penalty phase of the proceeding which shed new light on the entire matter. It is clear that Mr. Feldman enjoys in the profession a reputation of honest and integrity. It was also clear that Mr. Feldman has an outstanding record of community service particularly in the Jewish community in Toronto. The list of his community endeavours is contained in Appendix "A" and suffice it to say that the Committee was very impressed with the witnesses and the community service record of Mr. Feldman. It is to be noted that Mr. Feldman has been practising for 27 years and has not previously been before the Discipline Committee.

The Committee is satisfied that the borrowings by he and Mr. Cocomile set out in Complaint D16/85 violated the Rules of Professional Conduct. We are satisfied, however, that the Solicitor concealed the true identity of the borrower so as to hide from them that they were in serious risk of losing their investments. We are satisfied that the Solicitor did not engage in this conduct in order to enrich himself or any other person and while we find the conduct unprofessional and inappropriate we are not satisfied on the evidence that the Solicitor engaged in such conduct for the purposes of defrauding his clients.

We are satisfied that the Solicitor's involvement with Paul Horvat was similarly misguided and inappropriate and of course unprofessional conduct. We are again, however, not satisfied that any of the steps taken by the Solicitor were for the purpose of defrauding his clients or enriching himself. It is apparent from the evidence led that the significant change in real estate market conditions during the period involved, had a significant impact on the outcome of the clients' investments. As the market dropped Mr. Feldman scrambled to protect the investments but did so in a fashion that was inappropriate and without the authority of his clients.

Although the mortgages were indeed risky we are satisfied that Mr. Feldman thought, at the time of the initial investment, that the mortgages were reasonably secure investments. We are not satisfied that the clients would not have gone along with Mr. Feldman's recommendation as to these investments and we are clearly of the view that the fact that Mr. Feldman had a 5% interest in the investments was not a factor in Mr. Feldman's conduct. On the evidence we heard, we believe that the investors would have been even more secure and more inclined to invest had they known that Mr. Feldman had his own money in the transaction.

Nevertheless, we find that Mr. Feldman's conduct was reckless and reckless in the extreme. He should not have invested his clients' money in a project in which he had a personal financial interest without following the Rules of Professional Conduct and making sure that his clients were fully informed and had the benefit of independent legal advice. He should not have changed the security arrangements for the clients without, again, ensuring that they were properly informed and had the benefit of independent legal advice. While, however, we find the Solicitor's conduct reckless we specifically do not find that he was dishonest and for that reason we are satisfied that the penalty of disbarment would be inappropriate in the circumstances.

The evidence establishes that Mr. Feldman through his own resources and through the help of friends repaid as much of the monies to the investors as could be repaid in the circumstances. Mr. Feldman lost his home and appears to be virtually impecunious. It is true that his wife still retains ownership of the cottage which is mentioned in the initial report but this was explained on the penalty phase by one of the witnesses explaining that the monies equal to the value of the cottage had been borrowed on behalf of Mr. Feldman by friends in order to repay some of the investors.

On the evidence that we heard we are reasonably satisfied that the ongoing proceedings in connection with the Horvat transactions that all of the clients involved in the Horvat transactions will eventually make a full recovery. There was much evidence led with respect to ongoing proceedings in connection with a parcel of land that is currently under development. It appears that Mr. Horvat has resiled from an agreement made with Mr. Feldman to give security in another property being the Fitzwood property. It appears from the documentation that the Committee has had the opportunity of seeing that Horvat did indeed transfer his 20% interest to a trustee for all those to whom Horvat was indebted and given the present value of the property it appears in time that the investors will make a full recovery.

There was evidence led as to the serious effect that the suspension would have on Mr. Feldman. He is now a sole practitioner. He appears to have learned from his mistakes and is no longer engaged in syndicated mortgages. He has suffered serious financial losses. We know, however, that the financial losses presently being suffered by the clients are equally severe and although the clients may make an ultimate financial recovery it will not make up for the years of anguish and suffering they have had as a result of losing very significant amounts of their savings. We agree with Mr. Feldman's Counsel's submission that Mr. Feldman has had a long career without any serious incidents of misconduct. We agree that Mr. Feldman has an outstanding community record. Nevertheless it must be made clear to both the Solicitor and the profession that this kind of dealing with clients' money in the reckless fashion that Mr. Feldman exhibited must be met with a serious penalty. In all of the circumstances, we do not feel that Counsel's recommendation for Reprimand in Convocation is appropriate but equally we do not feel that the penalty of disbarment is appropriate. In all of the circumstances in giving this matter the best consideration that we can and balancing the interest of the public and the Solicitor we think a penalty of 18 months' suspension would be appropriate in the circumstances.

Meyer Feldman was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 12th day of April, 1962.

ALL OF WHICH is respectfully submitted

DATED this 9th day of January, 1989

"Robert Carter"  
Robert J. Carter  
Chair

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Report be adopted.

Submissions in regard to the Report were made by both counsel.

Counsel, solicitor and the reporter withdrew.

The Motion put by Mr. Somerville to adopt the Report was carried.

Counsel, solicitor and the reporter were recalled.

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 18 months be adopted.

There were submissions by both counsel. Counsel for the Society asked that the penalty be increased to disbarment.

Counsel for the solicitor provided Convocation with written submissions and sought a Reprimand in Convocation stating that the solicitor had not been dishonest and that no personal gain was intended or received.

Counsel, solicitor, reporter and members of the public withdrew.

It was moved by Mr. Furlong, seconded by Mrs. Graham that the solicitor be disbarred.

Lost

It was moved by Mr. Carey but failed for want of a seconder that the solicitor be suspended for 6 months.

It was moved by Mr. Shaffer, seconded by Mr. Carey that the solicitor be suspended for 12 months.

Not Put

The motion that the solicitor be suspended for 18 months was adopted.

Counsel, solicitor, reporter and members of the public were recalled.

Counsel and the solicitor were informed of the decision.

Mr. Mark made further submissions on the effective date of suspension. He asked that the effective date be May 15th, 1990.

Convocation granted that the suspension be effective May 15th, 1990 for 18 months.

The solicitor and counsel retired.

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CONVOCATION RECESSED AT 11:00 A.M.

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CONVOCATION RESUMED AT 11:15 A.M.

Convocation resumed in camera to deal with the Discipline Report  
of Eugene Nowak. (see in camera proceedings)

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:46 P.M.

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CONVOCATION RECONVENED AT 2:05 P.M.

PRESENT:

The Treasurer, (Mr. Lee K. Ferrier), Messrs. Arnup and Bastedo,  
Ms. Bellamy, Messrs. Campbell, Cullity, Ferguson and Furlong, Mrs.  
Graham, Messrs. Ground and Howie, Ms. Kiteley, Messrs. Lamek,  
Lawrence, Lerner, Levy, McKinnon, Noble and O'Connor, Ms. Peters,  
Messrs. Rock, Ruby, Somerville, Spence, Thom, Thoman, Topp, and  
Wardlaw, Mrs. Weaver and Mr. Yachetti.

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"IN PUBLIC"

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COMPENSATION FUND COMMITTEE

Mr. Yachetti presented the Report of the Compensation Fund  
Committee of its meeting on April 12th, 1990.

As the one item of Policy in the Report dealing with the removal  
of limits in the Compensation Fund was of such importance the Report was  
tabled to Convocation on Friday, April 27th so that a full discussion  
could be had at that time.

THE REPORT WAS TABLED

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LEGISLATION AND RULES COMMITTEE

Mr. Noble presented the Report of the Legislation and Rules  
Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990 at 11:15  
a.m. the following members being present: S. Lerner (Vice-Chair in  
Chair), R. Cass, and D. Murphy; D. Crosbie P.B. Bell and A. Stone  
also attended.

A.  
POLICY

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No items

B.  
ADMINISTRATION

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1. TEMPORARY MEMBERS - ATTORNEY GENERAL'S  
DEPARTMENT CROWN ATTORNEY EXCHANGE

The Secretary reported that Bill 97, an Act to amend the Law Society Act to admit temporary members of the Society for a specified period of time on the request of the Attorney General, is to be further amended in order to overcome concerns of Chief Justice Callaghan to provide for oaths prescribed by the Rules for temporary members. Section 28a (3) of the said Act is amended by adding after the word Society, in the second line, "Who has taken the oaths prescribed by the Rules for temporary members."

Paragraph 15 of section 62(1) of the Law Society Act is to be amended by adding, after the word members or any class of either of them.

RECOMMENDATION: It is recommended that Section 28a (3) be amended by adding, after the word Society, in the second line; " who has taken the oaths prescribed by the Rules for temporary members "so that the subsection will read as follows:-

28a (3)

For the period specified under subsection (1), a temporary member of the Society who has taken the oaths prescribed by the Rules for temporary members shall be deemed to be called to the bar and admitted and enrolled as a solicitor and is entitled to act and practise as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the Crown Attorneys Act, as a Crown attorney or assistant Crown attorney.

It is further recommended that paragraph 15 of subsection 62(1) of the Law Society Act be amended by adding at the end: "or any class of either of them" so that the said paragraph 15 will read as follows:-

62(1) 15

prescribing oaths for members and student members  
or any class of either of them.

2. AMENDMENT TO THE RULES MADE UNDER THE LAW SOCIETY ACT  
RE RULE 51(2) OF THE RULES RE OATHS FOR TEMPORARY  
MEMBERS

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The Secretary reported that Counsel for the Law Society, Arthur Stone, Q.C., has drafted subsection (2) of Rule 51 re oaths to be taken by temporary members.

RECOMMENDATION: It is recommended that section 51 of the Rules made under the Law Society Act be amended by adding thereto the following subsection:-

(2) Notwithstanding subsection (1), the oaths to be taken by temporary members who are not Canadian Citizens shall be the Solicitors Oath prescribed in subsection (1) and the Barristers Oath in the following form:

As a barrister at law you are called upon to protect and defend the rights and interest of whoever may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall not neglect any one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of the Province. All this you swear to observe and perform to the best of your knowledge and ability. So help you God.

3. AMENDMENTS TO THE RULES MADE UNDER  
THE LAW SOCIETY ACT RE THE INSURANCE COMMITTEE

The Practice and Insurance Committee on March 8th, 1990, and Convocation on March 22nd, approved of amendments to Rule 27, item 10, and Rule 46a changing the name of the Practice and Insurance Committee to the "Insurance Committee". Arthur Stone, Counsel for the Law Society, drafted the amendments to the Rules.

RECOMMENDATION: Your Committee recommends that Item 10 of Rule 27 of the Rules made under the Law Society Act be revoked and the following substituted therefor:

1. 10. Insurance

A N D

2. Rule 46a of the said Rules be revoked and the following substituted therefor:

Insurance Committee

46a The Insurance Committee is responsible to Convocation for matters pertaining to indemnity for professional liability for members of the Society and shall make such recommendations to Convocation as it considers advisable to carry out its responsibilities.

4. AMENDMENT TO RULE 50 UNDER THE LAW SOCIETY ACT  
INCREASING THE LATE FILING FEE OF A FORM 2 OR  
FORM 3 FROM \$5. TO \$10. PER DAY AND  
THE MAXIMUM BE INCREASED FROM \$600. TO \$1,500.

The Discipline Committee (policy section) on March 8th, 1990 approved of the above change in Rule 50 and its Report was adopted by Convocation on March 22nd, 1990.

Arthur Stone, Counsel for the Law Society, drafted the amendment to the relevant part of Rule 50.

RECOMMENDATION: Your Committee recommends that Rule 50 of the said Rules be amended by -

striking out "\$5/day for each day of default to a maximum of \$600.00" where it occurs opposite the last item under the heading "Miscellaneous" and inserting in lieu thereof "\$10. per day for each day of default to a maximum of \$1,500.00 for each filing period."

The amended part of Rule 50 would read as follows:

"Failure to file a Form 2 or Form 3 within the time prescribed by the Regulation.....\$10. per day for each day of default to a maximum of.....\$1,500. for each filing period."

C.  
INFORMATION

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1. BAR ADMISSION REFORM  
AMENDMENT TO REGULATION 573 PARAGRAPH 22(4)

The Secretary reported that discussions had taken place between the Society, Legislative Counsel and Counsel for the Attorney General, concerning the above matter. The redrafted proposed amendment to Regulation 22(4) dealing with Bar Admission Reform is in the process of being approved at Queen's Park by the Lieutenant Governor in Council.

ALL OF WHICH is respectfully submitted

DATED the 27th day of April, 1990

"B. Noble"  
Chair

THE REPORT WAS ADOPTED  
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Mr. Noble then made the following three motions arising out of the Legislation and Rules Committee Report:

1. That Rule 51 be amended by adding Subsection (2) as set out in the Legislation and Rules Report of its meeting of April 12th, 1990.
2. That Rule 27, item 10, and Rule 46(a) be amended as set out in the Legislation and Rules Report of its meeting of April 12th, 1990.
3. That Rule 50 be amended as set out in the Legislation and Rules Report of its meeting of April 12th, 1990.

All motions were seconded by Mr. Lerner and carried.  
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LEGAL AID COMMITTEE

Mr. Bastedo presented the Report of the Legal Aid Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990, the following members being present: Thomas G. Bastedo, (Chair), Mr. Bond, Ms. Callwood, Ms. Curtis, Mr. Durno, Ms. Garton, Ms. Kehoe, Ms. Kiteley, Messrs. Lalonde, Petiquan, Spence and Ms. Tsao.

A.

POLICY

B.

ADMINISTRATION

1. REPORT OF THE DEPUTY DIRECTOR, FINANCE, FEBRUARY 9, 1990

(a) Finance

The Director's Report pursuant to section 88(2) of the Regulation for the eleven months ended February 28, 1990 takes the form of the following financial statements:

Ontario Legal Aid Plan  
Statement of Income and Expenditures  
Eleven Months Ended February 28, 1990 (\$000)

	Actual	Budget	Actual	Favourable
	1988/89	1989/90	1989/90	Variance
<u>Opening Balance</u>	190.9	369.8	369.8	-
<u>Income</u>				
Treasurer of Ontario	105,316.2	115,167.6	115,168.7	1.1
Northern Legal Services	-	200.3	269.7	69.4
Family Violence Grant	275.0	275.0	275.0	-
Refugee Claimant Grant	-	2,687.8	1,836.1	(851.7)
Law Foundation	16,494.0	15,750.0	27,198.6	11,448.6
Client Contributions	7,032.2	7,425.0	7,864.3	439.3
Client Recoveries	1,429.7	1,558.3	1,528.5	(29.8)
Research Sales	114.6	128.3	100.8	(27.5)
The Law Society	3,564.6		500.0	500.0
Miscellaneous	772.1	458.3	2,177.2	1,718.9
	<u>135,189.3</u>	<u>144,020.4</u>	<u>157,288.7</u>	<u>13,268.3</u>

<u>Expenditure</u>				
Certificate Accounts	84,416.6	100,054.2	92,836.0	7,218.2
Refugee Accounts	-	2,310.0	2,689.9	(379.9)
Duty Counsel Fees				
& Disbursements	6,542.8	6,930.0	6,786.3	143.7
Salaried Duty Counsel	618.4	737.8	697.8	40.0
Northern Legal Services		200.3	200.3	
Community Clinics	17,561.4	20,037.5	20,226.4	(188.9)
Student Legal Aid				
Societies	789.6	889.8	881.3	8.5
Research Facility	1,223.6	1,354.0	1,285.4	68.6
Area Office				
Administration	7,634.3	8,287.7	8,743.0	(455.3)
Provincial Office				
Administration	5,424.9	5,877.3	5,710.6	166.7
Refugee Administration	59.7	182.7	200.4	(17.7)
	<u>124,271.3</u>	<u>146,861.3</u>	<u>140,257.4</u>	<u>6,603.9</u>
Closing Balance	<u>10,918.0</u>	<u>(2,840.9)</u>	<u>17,031.3</u>	<u>19,872.2</u>

(b) Statistics

The following table compares reported activity for the eleven months ended February 28, 1990 with activity for the previous fiscal year:

	February 28 1990	February 28 1989	% Change from Last Year
Summary Legal Advice	49,043	49,690	(1.3)
Referrals to Other			
Agencies	98,082	83,638	17.3
Applications for			
Certificates	147,150	124,571	18.1
Refusals	29,202	26,049	12.1
As a Percentage of			
Applications	19.8	20.9	
Certificates Issued	117,941	98,524	19.7
Persons Assisted			
by Duty Counsel:			
Fee for Services	209,398	202,173	3.6
Salaried	67,643	66,789	1.3

2.(a) REPORT ON THE PAYMENT OF SOLICITORS  
ACCOUNTS FOR THE MONTH OF MARCH, 1990

The Report on the Payment of Solicitors Accounts for the month of March, 1990 is attached hereto as SCHEDULE (A).

(b) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS  
DEPARTMENT FOR THE MONTH OF MARCH, 1990

The Report on the Status of Reviews in the Legal Accounts Department for the month of March, 1990 is attached hereto as SCHEDULE (B).

C.  
INFORMATION

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1. LIST OF SUB-COMMITTEES OF THE LEGAL AID COMMITTEE

The Legal Aid Committee received for its information a list of the Sub-Committees of the Legal Aid Committee and their members which is attached here as SCHEDULE (C).

ALL OF WHICH is respectfully submitted

"T. Bastedo"  
Thomas G. Bastedo  
Chair

April 12, 1990

Attached to original Report in Convocation File, copy of:

- B-Item 2(a) - Report on Payment of Solicitors Accounts for the Month of March, 1990. (Schedule A, Pages 1 - 2)
- B-Item 2(b) - Report on the Status of Reviews in the Legal Accounts Department for the Month of March, 1990. (Schedule B)
- C-Item 1 List of Sub-Committees of the Legal Aid Committee and their members. (Schedule C, Pages 1 - 3)

THE REPORT WAS ADOPTED

.....

Mr. Bastedo noted the fact that the Legal Accounts Department had made significant strides in processing Legal Aid accounts and he moved, seconded by Ms. Kiteley that Convocation acknowledge the work of the Legal Accounts Department for their effort in the last few months.

Carried

.....

DISCIPLINE POLICY COMMITTEE

Mr. Somerville presented the Report of the Discipline Policy Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your committee met on Thursday, the 12th of April, 1990 at one thirty in the afternoon, the following members being present: Mr. Somerville (Vice-Chair), The Honourable Allan Lawrence, Messrs. Carey, Cass, Cooper, Cullity, Lamek and Topp.

Ms. Sandra Chapnik was also in attendance.

B.  
ADMINISTRATION

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1B. Applications for exemption from the prohibition against members of  
Bencher firms representing solicitors in Discipline Proceedings

In March, 1990 your Committee considered a letter from Gavin MacKenzie calling for a review of the current practice respecting counsel from Bencher firms appearing in Discipline Proceedings. Your Committee referred the issue to the Special Committee on Discipline Procedures in March.

Attached at B1 - B2 is a further letter from Gavin MacKenzie dated March 16/90 which contains a specific request for exemption in connection with a matter to be heard in Convocation on April 26th/90.

Your Committee approved the exemption for Mr. MacKenzie as requested.

C.  
INFORMATION

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1C. Information

Authorization of Discipline Charges March 1990

	<u>Sought</u>	<u>Obtained</u>
Discipline	13	11
Complaints	13	8

Total # of charges for 1990

January	17
February	47
March	19
	<hr/>
	83

ALL OF WHICH is respectfully submitted

DATED this 27th day of April, 1990

"M. Somerville"  
Chair

Attached to original Report in Convocation file, copy of:

B-Item 1B - Letter from Mr. Gavin MacKenzie to Mr. Paul Lamek dated  
March 16, 1990 re: Eugene Ignatius Nowak.  
(Numbered B-1 to B-2)

THE REPORT WAS ADOPTED  
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LEGAL EDUCATION COMMITTEE

Mr. Rock presented the Report of the Legal Education Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990. The following members were present: A. Rock (Chair), M. Cullity (Vice-chair), T. Bastedo, D. Bellamy, C. Campbell, S. Chapnik, P. Epstein, R. Ferguson, R. Manes, J. Spence, S. Thom, J. Wardlaw, R. Yachetti, J. MacPherson.

A.

POLICY

1. Bar Admission Course Reform

The Bar Admission Course Reform Subcommittee met on Thursday, March 29, 1990. The following members were in attendance: James Spence (Chair), Donald Lamont, and Philip Epstein. Also in attendance were Dean Neil Gold, the Director, Marilyn Bode (Project Manager), Ronald Fallis (Faculty member), and Heather Walker (Assistant to the Project Manager).

The Subcommittee reviewed draft policies relating to Phase 1, the one month teaching term of the Bar Admission Course. (pages 1 - 4) The policies deal with:

- a) Assessment of Students,
- b) Appeals,
- c) Attendance Requirement, and
- d) Academic Rules and Offenses.

It is recommended that the draft policies be approved.

Approved

B.

ADMINISTRATION

1. Margaret Joanne Durant

The Committee considered the request of Margaret Joanne Durant at its meeting of March 8, 1990, and decided to defer consideration of the matter to its April meeting.

Margaret Joanne Durant requests abridgment of the articling requirement by 10 weeks for pregnancy and child care leave. The basis of her request is explained in her letter of February 22, 1990, supported by a letter of January 25, 1990 provided by the Community and Legal Aid Services Programme at Osgoode Hall Law School. (pages 5 - 13) In summary, Ms. Durant's submission is that her articling experience and her work with the Community and Legal Aid Services Programme while attending as a student at Osgoode Hall Law School are sufficient to satisfy the articling requirement.

Her application is unique in that she normally would be permitted to defer completion of the final 10 weeks of the articling requirement until after the teaching term of the Bar Admission Course. Ms. Durant submits that her circumstances and experience justify exemption from the final 10 weeks of the articling requirement.

The Committee considered the recommendations of the Women in the Legal Profession Subcommittee. The Subcommittee addressed the issue as one of general policy. In summary, the Director referred the following observations of the Women in the Legal Profession Subcommittee to the Committee for its consideration:

a) It was noted that the normal policy was to permit such a person to complete the balance of the articling period following the teaching term of the Bar Admission Course. This would delay the student's call to the Bar, but only until the first monthly meeting of Convocation following completion of the articling requirement.

b) It was acknowledged that smaller firms might have difficulty in taking back a student at that stage of the year. It was agreed that firms should be encouraged to take back students who had taken parental leave, to allow them to complete their articles. Experience indicated that where a firm was unable to take a student back, the student would nonetheless be able to find another articling position.

c) There was consensus that the purposes of the articling requirement and the Society's duty to the public, required the Society to insist upon completion of the full articling period.

d) It was agreed to report to the Legal Education Committee that it was the opinion of the Subcommittee that, as a general policy, parental leave ought not to be grounds for an abridgment of the articling period.

The Committee referred the recommendations of the Women in the Legal Profession Subcommittee to the Articling Reform Subcommittee for consideration.

It is recommended that Ms. Durant's request for exemption from the final 10 weeks of her articling requirement be denied. It is further recommended that Ms. Durant be permitted to defer her final 10 weeks of articling to a time to be agreed upon with the Director.

Approved

## 2. BENCHER VISITS TO ONTARIO LAW SCHOOLS

On March 8, 1990, the six Ontario Law Deans met with representatives of the Legal Education Committee at a meeting chaired by Allan Rock and Dean John Whyte. The meeting was followed by a dinner hosted by the Treasurer.

At the meeting it was proposed and agreed that a program of Bencher visits to the law schools ought to be initiated on a regular basis. Dean James MacPherson has written a letter to the Treasurer proposing that the Bencher visits be initiated. (pages 14 - 15)

It is recommended that the Treasurer and Director organize Benchers visits to Ontario law schools.

Approved

3. BUDGET: BAR ADMISSION COURSE REFORM

The Committee considered a request from the Chair of the Finance Committee to the Chairs of all Standing and Special Committees that all Chairs consider their respective Committee budgets, and in particular significant budget increases.

It is recommended that the Bar Admission Reform Subcommittee, chaired by James Spence, meet with the Chair of the Finance Committee to consider the Bar Admission reform budget.

Approved

C.  
INFORMATION

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1. CONTINUING LEGAL EDUCATION REFORM SUBCOMMITTEE

Mary Tomlinson (former Acting Deputy Director of Education) has now delivered her full Report on Continuing Legal Education. The Report is intended to serve as a tool for the Subcommittee in its deliberations.

The Subcommittee held its first meeting on April 12, 1990.

The members of the Subcommittee are: Thomas Bastedo (Chair), Denise Bellamy, Colin Campbell, Sandra Chapnik (replacing Roderic Ferguson), Marc Bode, Dean Donald McRae, Loretta Merritt, the Director, the Deputy Director, and the Continuing Legal Education Manager.

2. ADVOCATES' SOCIETY INSTITUTE

Denise Bellamy, Ronald Manes, and Alan Treleaven attended as the Law Society's representatives at the Advocates' Society Institute Planning Retreat on March 31 and April 1, 1990, held to plan future directions for the Institute. Particular attention was given to programming, marketing, and finances. There was a consensus that the relationship of the Institute with the Law Society and Advocates' Society as partners ought to be clarified, marketing ought to be improved, and some modifications ought to be made in programming. A report containing recommendations is being drafted with the intention that it be presented to the Legal Education Committee and the Advocates' Society no later than June of 1990.

3. ARTICLING REFORM SUBCOMMITTEE

Letters from members of the profession responding to the Draft Report of the Subcommittee continue to arrive.

A meeting of the Subcommittee has been scheduled to consider the written responses and the recommendations of the Bar Admission Advisory Subcommittee and the Canadian Bar Association-Ontario, with a view to drafting and presenting a final Report for consideration and approval.

4. BAR ADMISSION COURSE REFORM SUBCOMMITTEE

At its meeting of March 29, 1990, the Subcommittee received an oral report from the Director, in summary as follows:

- a) The Instructor and Student Course Materials have been prepared and are being printed.
- b) The recruitment of Instructors from the practising Bar has been completed and dates for Instructor training have been set in London, Ottawa, and Toronto.
- c) Arrangements to teach the one month session, beginning May 14, have been made with Ryerson Polytechnical Institute.
- d) Three vacancies exist in the Toronto faculty. Recruitment efforts, including the placing of advertisements in the Ontario Reports, continue. Katherine Corrick has been recruited on a contract basis from the Toronto Bar to serve as a member of Faculty for the duration of Phase 1 in 1990.

5. TREASURER'S ANNUAL DINNER: BAR ADMISSION COURSE  
SECTION HEADS AND SENIOR INSTRUCTORS

The annual meeting and dinner have been rescheduled from May 10, 1990 to May 22, 1990 at 3:00 p.m. The business meeting will be to discuss the most recent Bar Admission Course with a view to making improvements, to reviewing standards, and to planning the further reform of the Bar Admission Course. The dinner will be to honour the Heads of Section and Senior Instructors for their considerable contribution to the Bar Admission Course. All members of the Legal Education Committee have been invited.

6. COMPUTER EDUCATION FACILITY:

MONTHLY REPORT ON ACTIVITIES, MARCH, 1990.

The Report is attached. (pages 16 - 17)

7. CONTINUING LEGAL EDUCATION: REPORT ON COURSES

Video Replay Programs

The following programs were presented to the profession in the format of a video replay:

<u>Date</u>	<u>Program Name</u>	<u>Location</u>	<u>Registrations</u>
Jan. 24	Breathalyzer Returns!	London	19
Feb. 13	O.M.B. for the Non-Specialist	London	38
Feb. 16	Easements and Restrictive Covenants	Moonstone (Barrie)	11
Feb. 27	Estate Administration for Secretaries	Bracebridge	

Separation/Divorce Experience (Public Information)

This program was held in Toronto on the evening of January 29th, 1990 and was attended by 59 registrants.



#### Discovery In The Family Law Proceeding

This was a joint one day program with the Advocate's Society Institute. Registration was limited due to the nature of the program which was partially lectures and mostly small workshops of six to eight practitioners. 87 registrants attended in Toronto at Osgoode Hall. The evaluations for the program were all very good. Many of the registrants praised the Law Society for having a skills oriented program in the family law area. This program will be offered again.

#### Second Annual Medical/Legal Symposium

This half day program was jointly presented with the Medical Legal Society on January 31, 1990 at Osgoode Hall. There were 50 registrants for this program, the majority of whom rated the program as very good.

#### Civil Litigation Breakfast Series (Ottawa)

This program was held in Ottawa for 18 registrants on February 6th, 1990. In addition and as part of the series, 25 registrants attended the Civil Litigation Jury Trials in Ottawa on February 27th, 1990.

#### Civil Litigation For Support Staff

216 registrants attended this one day basic civil litigation program for support staff at O.I.S.E. in Toronto on February 13th, 1990. This was billed as a basic civil litigation program. A few of the registrants, although they had no experience in civil litigation, found it to be too basic. Also there were a number of very good evaluations.

#### Mediation For The Family Law Practitioner

This was a joint program with the Family Mediation Service of Ontario. This was the first time that such a program was presented by Ontario mediators for Ontario practitioners. Previously this has been presented by American mediators for Ontario lawyers. The program stretched over a period of 5 days, commencing on Friday, February 16th, 1990, continuing on Saturday, February 17th, Friday February 23rd, Friday, March 2nd and concluding on Saturday, March 3rd, 1990. The program was held at the Hincks Institute in Toronto and was limited to 24 registrants. The evaluations were exceedingly positive. This will definitely be a program that will be repeated in the Fall.

#### Immigration Law

70 registrants attended this program in Toronto on February 19th, 1990. This program was well received by the registrants and the co-chairman have asked to repeat the program for the Fall or early Winter, 1991.

#### Corporate Law For Support Staff (Ottawa)

This program was presented in Ottawa on February 28th, 1990.

#### Basic Real Property - Update

This program was presented on March 27th, 1990 for 178 registrants at the C.B.A.O. premises. The evaluations which were received reflected the audience's view that the program was very well organized and the speakers were excellent.

#### Personal Property Security Act: Update

This program was an update to a program which was originally presented by the Society in May of 1989 on the P.P.S.A. It was presented at the Harbour Castle on March 28th, 1990 with 146 registrants. The program, co-chaired by Frank Bennett and John Varley, was well received by those in attendance.

Advertising Law

60 registrants registered for this one day program which was held at the Old Mill on March 29th, 1990.

A Practical Guide To Registration Under The Securities Act

97 persons attended this one day program on March 29th, 1990 at the Old Mill in Toronto.

LSUC/CBAO LIAISON COMMITTEE MEETING

March 16th, 1990

Items covered at this meeting included joint programming, the real property curriculum schedule, and a discussion of curriculum programming in general. Joint programs this year have virtually all been completed. These included the last four real estate curriculum programs as was decided at a liaison meeting last June, and a CBAO 1990 Institute program on No Fault Insurance. Members also talked about the possibility of setting up a subcommittee to study curriculum programming. It was felt that the Liaison committee might be the ideal group to set policies and define an agenda for this subcommittee. In attendance: on behalf of the CBAO - Brian Bucknall, Alison Manzer, Paul Perell, Victoria Stuart, Heather McArthur; on behalf of the LSUC - Brenda Duncan, Kathleen Will, Sandra Smit and Cheryl Keech Barr. The next meeting is scheduled for Thursday, April 19th, 1990.

ALL OF WHICH is respectfully submitted

DATED this 12th day of April, 1990

"A. Rock"  
Chair

Attached to the original Report in Convocation file, copy of:

- A-Item 1 - The Bar Admission Course Reform Subcommittee draft policies relating to Phase 1, the one month teaching term of the Bar Admission Course re: Assessment, Appeals, Attendance Requirement and Academic Rules and Offenses. (Pages 1 - 4)
- B-Item 1 - Letter from Ms. Joanne Durant to Mr. Alan Treleaven dated February 22, 1990 re: Maternity Leave During Articles/Exemption; letter from Mr. Edward A. Strange to Mr. Alan Treleaven dated January 25, 1990 together with "Appendix 'A'" re: Joanne Durant. (Pages 5 - 13)
- B-Item 2 - Letter from Dean J. C. MacPherson to Mr. Lee Ferrier dated March 21, 1990 re: Benchers Visits to Ontario Law Schools. (Pages 14 - 15)
- C-Item 6 - Report re: Computer Education Facility: Monthly Report on Activities, March 1990. (Pages 16 - 17)

THE REPORT WAS ADOPTED

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RESEARCH AND PLANNING COMMITTEE

Mr. Spence presented the Report of the Research and Planning Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990 at 8:00 a.m., the following members being present: Mr. Spence (Chair), Ms. Bellamy, Ms. Birenbaum, Mr. Campbell, Ms. Kiteley, Mr. McKinnon, Mr. Smith.

Also present: Ms. Angevine, Mr. Brockett, Mr. Tinsley.

A.

POLICY

1. DISCLOSURE OF PREGNANCY BY ARTICLING STUDENTS

- a. There was discussion as to whether a student, who knows at the commencement of articling that she is pregnant, should be expected to disclose the fact to her principal. It was said that failure to disclose might create difficulties for the small firm.
- b. It was agreed to ask the Subcommittee on Women in the Legal Profession to consider the issue.

2. OPEN CONVOCATION

The first draft of a discussion paper on Open Convocation was considered. It was agreed to revise the draft with a view to eventual distribution to Benchers.

3. ALTERNATIVE DISPUTE RESOLUTION

- a. A synopsis of proceedings by the Subcommittee on Alternative Dispute Resolution was approved.
- b. It was decided to send the synopsis to Benchers with a request for comments.

B.

ADMINISTRATION

1. POSSIBLE FUTURE ENDEAVOURS

- a. The Committee approved the text of a memorandum, to be sent to all committees, asking for suggestions as to emerging policy issues that might be considered by the Research and Planning Committee.
- b. It was agreed to add to the list of possible future endeavours:
  - (i) A study of the growing disparities between large and small firms.
  - (ii) Development of a policy proposal concerning Benchers communication with the media in respect of matters before Convocation.

2. MEMBERSHIP OF THE SUBCOMMITTEE ON ALTERNATIVE  
DISPUTE RESOLUTION

It was agreed to invite Ms. Sandra Chapnik to join the Subcommittee on Alternative Dispute Resolution following the April Convocation.

3. GENDER NEUTRAL COMMUNICATION

- a. It was reported that the General Neutral Guidelines had been sent to all members of staff together with the Ryerson Polytechnical Institute booklet "A Guide to Communicating Gender Parity."
- b. It was recommended that a copy of the Ryerson booklet be sent to each Benchers.

C.  
INFORMATION

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1. SUBCOMMITTEE ON WOMEN IN THE LEGAL PROFESSION

It was reported that:

- a. The Subcommittee on Women in the Legal Profession had recommended to the Legal Education Committee that, as a general policy, parental leave ought not to be grounds for an abridgment of the articling period.
- b. A questionnaire, in connection with a survey of transitions in the Ontario legal profession, was ready for mailing to a random sample of 2,600 members.
- c. The Subcommittee would be asking the Insurance Committee to investigate the possibility of reduced insurance premiums for members practising less than full-time.
- d. The Subcommittee had asked the Finance Committee to consider reducing from 75% to 50% the membership fee for those persons who were employed otherwise than in the practice of law.

2. BUDGET FOR 1990-1991

The Finance Committee was proposing for the Research and Planning Committee a budgetary allocation of \$63,400. This was 9% less than the amount requested (\$75,000). It was noted that the amounts budgeted for subcommittees were not affected by the proposed reduction.

ALL OF WHICH is respectfully submitted

DATED the 27th day of April, 1990

"J. Spence"  
Chair

THE REPORT WAS ADOPTED

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The Treasurer retired from the Chair in order to attend the swearing in of Mr. Justice C. Osbourne to the Ontario Court of Appeal and Mr. Ground, Chair of Finance took the Chair.

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INSURANCE COMMITTEE

Mr. Furlong presented the Report of the Insurance Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990 at one-thirty in the afternoon, the following members being present: Messrs. Howie (Vice-Chair), Epstein, Wardlaw, Crosbie, Smith, Whitman and O'Toole.

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A".

2. OUTSTANDING ITEMS

(a) Captive/Reinsurance - Representatives of both The Law Society and its brokers met with representatives of Lloyd's of London during the first week of April to pursue negotiations with respect to the terms by which The Law Society's Professional Liability Insurance policy would be renewed for the 1990/91 policy period. It is anticipated the terms for the renewal will be reflective of the terms pertaining to the current policy period. Mr. Ken Barrett, representing the lead syndicate, will confirm the Insurer's position regarding the terms of renewal, by April 27, 1990.

(b) Errors and Omissions 1990/91 Budget - Your Committee expressed concern that the Errors and Omissions Department have sufficient staff to handle the volume of open claim files, and to accommodate an expected increase in the frequency of new claims. The Director reiterated that the Department's proposed 1990/91 budget includes the addition of two examiners and two support staff because of the claim volume. All Committees had been asked to review their respective budgets with a view to eliminate all non-essential staff increases. Your Committee recommends that in view of the current number of employees, and the volume of claims, there is no allowance for a reduction in the staffing requirements contained in the proposed Errors and Omissions budget. Your Committee unanimously endorses the 1990/91 budget in its present form.

Concern was also expressed about including the Practice Advisory budget in the Errors and Omissions budget. The funds necessary for the Practice Advisory service impact on the Errors and Omissions levy, and since neither the Insurance Committee nor the Errors and Omissions Department have control over the operation of Practice Advisory, your Committee recommends that further discussion of this subject would be appropriate.

(c) Research Bank - Pursuant to your Committee's concern that the briefs available to the Errors and Omissions Department and its defence counsel through the Legal Aid Research Department satisfy the needs of the Errors and Omissions defence counsel, the Director is proceeding with an analysis of the benefits and costs of this program. The Chair has asked the Director to report to the Committee on this matter during the May 10, 1990 Committee Meeting.

(d) Compensation Fund - Errors and Omissions Insurance Fund - Pursuant to your Committee's recommendation that it would be appropriate to review the pros and cons of the current Compensation Fund policy which dictates that claimants must first pursue the Errors and Omissions Insurance Fund to claim against innocent partners, contrasting this practice with the pros and cons of having the Compensation Fund bear the obligation to pay the claimants' losses initially thus, allowing them to pursue the Errors and Omissions Insurance Fund for recovery of the losses or expenses in excess of the Compensation Fund limit, the Chair has corresponded with Mr. Harvey Strosberg to pursue an inquiry in this regard, and to address the question of the feasibility and cost effectiveness of providing insurance to protect the Society from catastrophic claims against the Compensation Fund. The Chair has asked the Director to report to the Committee on this matter during the May 10, 1990 Committee Meeting.

(e) Undertaking - Agreement of Purchase and Sale - At the January 1988 meeting, your Committee reviewed a report on undertakings and mortgage discharge provisions submitted by Brenda A. Duncan then, Assistant Director of Practice Advisory Service. A Subcommittee chaired by Mr. James Wardlaw was appointed to address the problems associated with such undertakings. Mr. Wardlaw wrote to the Treasurer on January 15, 1988 advising that a Statutory Amendment would be the only solution to the problems associated with such undertakings, and he further suggested that Ian Scott be contacted to appoint a group from his Ministry or from Consumer and Commercial Relations to consider this matter with the Subcommittee. The Treasurer elected to postpone contact with Mr. Scott until such time as an analysis of The Law Society's claims experience regarding such undertakings could be made available. The claims statistics available at the time of the Treasurer's decision could not be separated to reliably specify the experience related to this issue. The Director is pursuing the necessary steps to allow for the isolation of the statistics. The Chair has asked the Director to report to the Committee on this matter during the May 10, 1990 Committee Meeting.

(f) Errors and Omissions In-House Legal Advisor - The role of the Errors and Omissions In-House Legal Advisor would be to provide advice and assistance to members of the Errors and Omissions staff and, if required, to Errors and Omissions defence counsel regarding matters involving litigation both prior to and following the commencement of formal legal proceedings. The Advisor's scope of activity would include advice on specific claim files as well as assisting in the advancement and development of programs to enhance control and handling of claims from a defendant's perspective. The presence of such an Advisor should also assist in standardizing the manner by which outside defence counsel and the Errors and Omissions staff handle claims that involve active litigation or that may be litigated. The benefits arising from access to such an Advisor should reflect favorably on claim settlement values and the costs associated with the involvement of defence counsel.

The Director has been requested to provide your Committee with full particulars of how the Legal Advisor will serve the Professional Liability Insurance Program, of how much time will be required to complete the Advisor's duties, and what costs will be incurred by The Law Society in providing such a service. When the details for this

position are agreed upon and formalized greater consideration can then be given to the qualifications and attributes candidates will require in preparation for the selection process. The Chair has asked the Director to report to the Committee on this matter during the May 10, 1990 Committee Meeting.

ALL OF WHICH is respectfully submitted

DATED this 17th day of March, 1990

"P. Furlong"  
Chair

Attached to original Report in Convocation file, copy of:

Item 1 - The Director's Monthly Report for February 1990.  
(Schedule "A", Pages 1 - 4)

THE REPORT WAS ADOPTED

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UNAUTHORIZED PRACTICE COMMITTEE

Mr. McKinnon presented the Report of the Unauthorized Practice Committee of its meeting on April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of April, 1990 at 10:30 a.m., the following members being present: Messrs. Ruby (Chair), McKinnon (Vice Chair), Carter, Cass, Lawrence and Ms. Weaver. Also in attendance was: Mr. John (Secretary).

B.  
ADMINISTRATION

1. ACCOUNTS

Accounts of counsel and investigators were approved in the total amount of \$4,646.90.

2. INVESTIGATIONS

The Society does not have sufficient evidence in some cases to commence a prosecution. The Committee authorized a request to the Treasurer for the use of an investigator who will not disclose that he/she is from the Law Society and to authorize the commencement of prosecutions if the necessary evidence is obtained.

3. INCORPORATION - ABORIGINAL LEGAL SERVICES OF TORONTO INC.

Your Committee reviewed this application for incorporation; it instructed its Secretary to determine whether this body is receiving assistance from the Legal Clinic Funding Committee. If not, the Committee recommends that this application be opposed as, on the face of it, they are seeking to practise law through a corporation. It was suggested that were this body to alter its objects to indicate that it would help find lawyers for Aboriginal people, the Committee would be less inclined to oppose the application.

4. CENTRO CONSULENZA LEGGE ITALIANA INC.

Your Committee has received correspondence regarding the above noted organization which purports to offer the Italo-Canadian Community of Metro and surrounding areas advice on matters dealing with Italian law. This includes such issues as property, inheritance, expropriation, sale of properties, Italian pensions, declaration of income and many other matters dealing with Italian law. This organization wishes to retain an Italian lawyer who is not called to the Bar in Ontario to render services through this organization as an advisor. Your Committee reviewed the letter and decided to refer this inquiry to the Admissions Committee for Accreditation as Foreign Legal Consultants.

Approved

ALL OF WHICH is respectfully submitted

DATED this 27th day of April, 1990

"C. McKinnon"  
Chair

Prosecutions

Next Court Date

Paralegal Associates Inc.  
c.o.b. "Paralegal Associates"  
(Mississauga)

March 26, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Randy Mitter  
(Paralegal Associates Inc.  
c.o.b. "Paralegal Associates")  
(Mississauga)

March 26, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Heather Daer  
(Paralegal Associates Inc.  
c.o.b. "Paralegal Associates")  
(Mississauga)

March 26, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Marc Monson  
(Action Paralegal)  
(Downsview)

April 4,5,6, 1990 at  
10:00 a.m.  
Courtroom 302  
Trial

786301 Ontario Ltd.  
(Action Paralegal)  
(Downsview)

April 4,5,6, 1990 at  
10:00 a.m.  
Courtroom 302  
Trial

Richard Perry  
(Regional Paralegal)  
(Hamilton)

April 6, 1990 at 9:00 a.m.  
Courtroom 9  
To set a date



Richard J. Gordon (Paralegal Associates) (Burlington)	April 9, 1980 at 9:00 a.m. Courtroom 2 To be spoken to
Shelley Hisey (Paralegal Associates) (Orillia)	April 9, 1990 at 9:00 a.m. Courtroom To be spoken to
Natalie MacPhee (Paralegal Consultants Inc.) (Ottawa)	April 9, 1990 at 9:00 a.m. Courtroom 5 Sault Ste. Marie To be spoken to
John Galbreath (Ottawa)	April 9, 1990 at 9:00 a.m. Courtroom 5 To be spoken to
Thomas W. Walker (Ontario Paralegal) (Owen Sound)	April 10, 1990 at 10:30 a.m. Courtroom To be spoken to
Julian T. Shumka (Paralegal Associates) (Kitchener)	April 11, 1990 at 9:00 a.m. Courtroom 5 To be spoken to
834259 Ontario Inc. (Paralegal Associates) (Kitchener)	April 11, 1990 at 9:00 a.m. Courtroom 5 To be spoken to
Dale Hoskin (Timmins)	April 17, 1990 at 9:30 a.m. Courtroom To be spoken to
Frank Sysel (Paralegal Associates) (Chatham)	April 17, 1990 at 9:00 a.m. Courtroom 2 Trial
Natalie MacPhee (Ottawa)	April 17, 1990 at 10:00 a.m. Courtroom 140 Old City Hall To be spoken to
John Galbreath (Ottawa)	April 17, 1990 at 10:00 a.m. Courtroom 140 Old City Hall To be spoken to
Eileen Barnes (Mississauga)	April 18, 1990 at 9:00 a.m. Courtroom 1-Brampton Prov. Crt. To be spoken to
656510 Ontario Ltd. (Mississauga)	April 18, 1990 at 9:00 a.m. Courtroom 1-Brampton Prov. Crt. To be spoken to
Susan Merchant (Paralegal Associates) (Ottawa South)	April 26 & 27, 1990 at 8:30 a.m. Courtroom 3 To set a date for pre-trial
Natalie MacPhee (Paralegal Consultants) (Ottawa)	May 4, 1990 at 12:00 p.m. Courtroom 7 Trial

Paralegal Consultants (Ottawa)	May 4, 1990 at 12:00 p.m. Courtroom 7 Trial
Dorothy Thiry Divorce Aid (London)	May 28, 1990 at 10:00 a.m. Courtroom 3 Trial
Susan Merchant (Paralegal Associates) (Ottawa)	June 7 & 8, 1990 at 9:00 a.m. Courtroom 3 Pre-Trial
Jane Baker Ontario Paralegal (Chatham)	June 14, 1990 at 10:00 a.m. Courtroom 3 Plea & Trial
Peggy Wilson Divorce Easy (London)	June 18, 1990 at 10:00 a.m. Courtroom 2 Trial
Norine Earl (Toronto Divorce Services) (Toronto)	June 25, 26, 27, 1990 at 9:00 a.m. Old City Hall Courtroom 111 Trial
Fred May (Paralegal Associates) (Downsview)	June 28 & 29, 1990 at 10:00 a.m. Courtroom 306 Trial
Personal Paralegal (Toronto)	July 3, 1990 at 10:00 a.m. Courtroom 140 Trial
Christian Vadum (Personal Paralegal) (Toronto)	July 3, 1990 at 10:00 a.m. Courtroom 140 Trial
David Nancoff (Ontario Paralegal) (Toronto)	July 30-August 4, 1990 at 10:00 a.m. Ottawa Prov. Court Trial Continuation
Ontario Paralegal Ltd. (Toronto)	July 30-August 4, 1990 at 10:00 a.m. Ottawa Provincial Court Trial Continuation
696631 Ontario Ltd. (Stephen Kuz) (Etobicoke)	August 8, 1990 at 10:00 a.m. Courtroom 203 Trial
Andrew Czornyj (Jacobi & Myers) (Toronto)	May 20, 1991 at 10:30 a.m. Courtroom 1-Brampton Prov. Court To set a date
Douglas Traill (Jacobi & Myers) (Toronto)	May 20, 1991 at 10:30 a.m. Courtroom 1-Brampton Prov. Court To set a date
Jacobi & Myers (Toronto)	May 20, 1991 at 10:30 a.m. Courtroom 1-Brampton Prov. Court To set a date

THE REPORT WAS ADOPTED

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COUNTY & DISTRICT LIAISON COMMITTEE

Mr. Somerville presented the Report of the County & District Liaison Committee of its meetings on March 8th and April 12th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY & DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday the 8th of March and on Thursday, the 12th of April, 1990 at four thirty in the afternoon.

Present at the March Meeting were: Ms. Peters (Chair), Messrs. Carey, McKinnon, Topp and Wardlaw. Ms. Mossip and Messrs. Arrell, Bode, Brennan, Lalande, Lovell, O'Dea and Smith were present from the County & District Executive. Ms. Angevine and Mr. Howell from the Law Society staff were also in attendance.

Present at the April Meeting were: Messrs. Somerville (Chair), Carey, Ferguson, Lamak, McKinnon, and Spence. Ms. Mossip and Messrs. Bode, Brennan, Lalande O'Dea and Weekes attended from the County & District Executive. Ms. Angevine was also in attendance from the Law Society staff. Ms. Chapnik also attended.

BUDGET (March)

Your Committee reviewed the preliminary budget estimates for the up-coming fiscal year and following discussion approved same for forwarding to the Finance Committee.

SUB-COMMITTEE ON WOMEN IN THE LEGAL PROFESSION (March)

The Executive reported that it had reviewed the report in its entirety and found it impressive. The committee resolved that the Chair of the Subcommittee be invited to meet with the Executive in April to discuss how the County and District Law Presidents' Association might best assist the Subcommittee in its work.

The Executive also reported that the Chair of the Subcommittee will be invited to address the members of the County and District Law Presidents Association at the May Plenary Session.

SPECIAL COMMITTEE ON COMPLAINTS PROCEDURES (March)

Your Committee discussed at some length various recommendations contained in the Working Papers presented to Convocation by this Special Committee. The County & District Law Presidents Association Executive expressed some reservations concerning the proposal that the Society enlist the assistance of members of the profession to aid complainants in drafting complaints. The Executive stressed, however, that it supported the philosophy of the Special Committee and the direction taken by it generally.

The Executive also reported that Ms. Callwood has been invited to meet with the Executive Committee in April to discuss the work of the Special Committee.

PLENARY SESSION MAY, 1990 (April)

Michael O'Dea reported on the progress of the plans for the May Plenary and offered thanks on behalf of the Executive to Roberta Hewlett for her assistance in arranging for distribution of materials to the Presidents.

FEE GUIDELINES (April)

The Executive Committee reported that it has placed this issue on the Agenda for the May Plenary. Your Committee then discussed generally the approach taken to the issue of fee guidelines by the Ontario Land Surveyors Association and whether or not it would be appropriate or advisable for the Law Society to adopt a similar approach. Further consideration will be given to this issue following the May Plenary.

LEGAL AID SUB-COMMITTEE ON DELIVERY OF LEGAL SERVICES IN THE AREA OF FAMILY LAW (April)

Mr. Lalande reported on the issues under consideration by this Subcommittee of Legal Aid. There will be a further report at the next meeting of the County & District Liaison Committee.

ALL OF WHICH is respectfully submitted

DATED the 27th day of April, 1990

"M. Somerville"  
Chair

THE REPORT WAS ADOPTED

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CERTIFICATION BOARD

Mr. Furlong presented the Report of the Certification Board dated April 27th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCAION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

The Intellectual Property Specialty Committee, chaired by Ronald E. Dimock (of Toronto), was struck by Convocation on the 22nd March, 1990.

Bearing in mind paragraph 9. of the Structure Committee Report of May 10, 1989, which reads: "The Specialty Committee members shall be representative of the various facets and interests of that particular specialty ...", Mr. Dimock has formed a nine-member Committee as listed below:

Ronald E. Dimock (of Toronto) - Chair  
Joseph A. Day (of Kitchener)  
Carol Hitchman (of Toronto)  
Malcolm S. Johnston (of Toronto)  
Charles Kent (of Ottawa)  
John Macera (of Ottawa)  
David A. Morrow (of Ottawa)  
Cynthia Rowden (of Toronto)  
Colleen Zimmerman (of Toronto)

26th April, 1990

The Certification Board recommends the approval of the above lawyers to serve on the Intellectual Property Specialty Committee.

ALL OF WHICH is respectfully submitted

DATED this 27th day of April, 1990

"P. Furlong"  
Chair

THE REPORT WAS ADOPTED

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PUBLIC INFORMATION COMMITTEE

Mr. McKinnon presented the Report of the Public Information Committee of its meeting on April 12th, 1990.

THE REPORT WAS TABLED

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Confirmed in Convocation this       day of       1990.

Treasurer